**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.**

**Case No. : C.R.No.3814 of 2006**
**Date of Decision : November 28, 2006.**

Surinder Singh and another ..... Petitioners

Vs.

Sabar Ali ..... Respondent

**Coram : Hon'ble Mr.Justice P.S.Patwalia**

* * *

Present : Mr.G.S.Bhatia, Advocate
for the petitioners.

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**P.S.Patwalia, J. (Oral) :**

The present revision petition has been filed against concurrent findings recorded by the Rent Controller and the Appellate Authority ordering the eviction of the petitioner-tenant on the ground of bona fide personal necessity of the landlord as also on the ground that the demised premises has become unfit for human habitation. The premises is a small shop situated in Malerkotla. The landlord had filed the petition pleading that he is a carpenter and is working as such for the last seven years. He wanted to run his business in the shop in dispute as he has no other premises for his business. He further pleaded that the disputed shop was also unfit for human habitation as the wooden roof of the shop could fall down at any time. He had stated that he had made several requests to the respondent to vacate the said shop but since the respondent refused to do so the present suit was filed.

The respondent contested the suit. He denied the relationship of landlord and tenant between him and the landlord. He also denied the

fact that the landlord required the shop for his bona fide necessity and the said shop was unfit for human habitation. Before the Rent Controller it was established that there existed the relationship of landlord and tenant between the parties. The Rent Controller also observed in favour of the landlord with regard to bona fide personal necessity and also that the shop in dispute had become unfit for human habitation. Before the Appellate Authority the petitioner-tenant did not challenge the findings on the first issue and accepted that he was tenant of the respondent-landlord. He challenged the findings on the remaining two issues but failed. It is therefore that the present revision petition has been filed.

In so far as the finding on the second issue is concerned the trial court has recorded that a reading of testimony of various witnesses, report Ex.AW-5/1 and the photographs produced clearly show that half of the roof of the shop has fallen down. The witnesses admitted before the court that one wooden girder in the roof had fallen down. It has also been noted that the construction of the shop in question is 50/55 years old and in the opinion of Dev Raj Gupta AW-5, the entire building structure was constructed with poor quality material and had become weak. Most importantly the trial court has also noted that the respondents had filed a petition against the father of the present petitioner under Section 12 of the Eat Punjab Urban Rent Restriction Act, 1949. A copy of the order passed in that petition was exhibited as Ex.P-X. The trial court has quoted the extract of the order as hereunder :-

> *".....In that very order court held that "as the half of the roof has fallen down, certainly the shop in dispute is unfit and unsafe and no permission can be granted for its repair.""*

It is on the aforesaid basis that a finding was recorded against the petitioner. I find no error in the view taken by the courts below on this issue.

Even on the issue of bona fide personal necessity it has been found that the present shop was required by the landlord for carrying on his vocation of carpentary. Learned counsel for the petitioners has stated that the landlord had not specifically stated that he had not vacated any other shop in the same area after the coming into force of the Act. The said contention has been noted by both the courts below and rejected on the ground that in the present case, the petitioner could also have set up the said defence. Further it has been noted that it has nowhere come in the evidence that he had vacated any other shop in the aforesaid area after the coming into force of the Act. The said plea has been rejected by the Rent Controller with the following observations :-

> ***"22.*** *But on the other hand, counsel for the respondent has argued that shop/non residential building can be vacated for bonafide requirement if the parties pleaded and proved the necessary ingredient as mentioned in the Section 13 (3) (2) (ii) of the E.P.U.R.R.Act. Counsel for the respondent has relied upon case titled as Prataprai N. Kothari Versus John Braganza' 1999(2) CCR, 568 it was held that Pleading & Proof – in the absence of a plea, no evidence is admissible. But on the other hand counsel for the petitioner has relied upon case titled as `M/s British Motor Car Company Pvt. Ltd. Versus Sewak Sabha Charitable Trust (Regd.) 2003 (2) Rent Control Reporter, 606 E.P.U.R.R.Act, 1949, Section 13(3)(3)(a)(i)(a) – Civil Procedure Code, Order 6, Rule 2 – Pleadings – Suit for eviction – All ingredients not pleaded where the parties properly understood each other's case and*

*necessary evidence was adduced, technical ground of omission to plead requirement in specific terms can not be a ground of omission to plead requirement in specific terms cannot be a ground of non-suiting the landlord and case titled as Vishwa Mitar and others Versus Manohar Lal Makkar 2004 (2) RCR, 177, (c) Civil Procedure Code, Order 6 Rule 2 – East Punjab Urban Rent Restriction Act, 1949, Section 13(3)(a) (iii) – Pleadings – Petitioner under Rent Act – Pleadings are not be strictly according to provisions of C.P.C. (E) Civil Procedure Code, Order 6 Rule 2 – East Punjab Urban Rent Restriction Act, 1949, Section 13 (3) (a) (iii) – Pleadings – Ingredients – Petition for eviction under Rent Act – Contention that all ingredients of the relevant section were not pleaded. Contention repelled. Law of pleadings would not be applicable to the proceedings before a Tribunal because the proceedings before a Tribunal are summary nature.*

***23.*** *When both the parties have lead the extensive evidence & understood the case of each other then mere non-mentioning of technical language does not have any impact.*

***24.*** *That RW-1, in his testimony have admitted that petitioner Sabar Ali knows the work of carpenter and he does not have any vacant shop to do the work.*

***25.*** *Similarly RW-2 Rejinder Singh in his cross examination have admitted that petitioner*

*does not have any vacant shop to do the work. Even respondent Surinder Singh in his testimony have admitted that respondent is doing the work of carpenter and he does not have any vacant shop in Malerkotla.*

***26.*** *Though the petitioner have not specifically mentioned the fact that he does not own any other shop in Malerkotla. But from the testimony of witnesses it becomes crystal clear that the does not own or possess any other shop in Malerkotla.*

***27.*** *Thus from the testimony of the petitioner himself coupled with the testimony of respondent witnesses & it has become crystal clear that petitioner does not have any vacant shop in the Malerkotla to do the work of Carpenter. Thus this issue is decided in favour of petitioner and against the respondent, as he required the shop for his personal necessity."*

I find no error in the view taken by the courts below on this issue as well. Consequently I find no merit in this revision petition and the same is accordingly dismissed.

November 28, 2006 ( P.S.Patwalia )
*monika* Judge